

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 31449 of 2007(R)

PETITIONER:

**N.AYYAPPAN NAIR
S/O. GOPALAN NAIR NHAREKKAT HOUSE,
KARAKKAT ROAD, GURUVAYOOR.**

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
- 2. THE REVENUE DIVISIONAL OFFICER
CHAVAKKAD, THRISSUR DISTRICT.**
- 3. THE TAHASILDAR
CHAVAKKAD TALUK, CHAVAKKAD THRISSUR DISTRICT.**

BY GOVERNMENT PLEADER SRI.K.P.PRADEEP

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ANTONY DOMINIC, J.
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W.P.(C) NO. 31449 OF 2007 R
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Dated this the 23rd day of October, 2007

J U D G M E N T

The prayer sought for in this writ petition is to quash Exts. P7 and P10. Ext.P7 is an order of assessment issued under the Kerala Building Tax Act treating the apartment complex constructed by the petitioner as one unit and levying the building tax wholly on the petitioner. Ext.P10 is an order passed in the appeal filed by him against Ext.P7, requiring him to remit two instalments and informing that in the absence of such remittance, the appeal will be rejected.

2. It is the petitioner's specific contention that the apartment complex in question has been constructed on the basis of agreements with individual owners, the list of which is Ext.P1. Petitioner has also produced as Ext.P2, a specimen of the sale deeds that he has executed with the respective owners of the flats. The petitioner submits that the flat in question was constructed utilising the individual contributions made by the

respective owners of the building and that they had proof to support this contention. According to him, it is ignoring all these evidence and despite the provisions of the Kerala Building Tax Act that assessment has been completed.

3. This question has been considered by this court in various judgments and the judgment in the case of **Bavasons Constructions (P) Ltd. v. State of Kerala (2007(3) KLT 101)** is one such case, where relief was granted to a similarly situated person. The facts of this case being identical to the one decided by this court, I am satisfied that the petitioner is also entitled to similar reliefs. Since the appellate authority is seized of the matter, I am not interfering with the assessment order.

4. Accordingly, I dispose of this writ petition quashing Ext.P10. In view of this the 2nd respondent is to dispose of the appeal filed by the petitioner in the light of the law as laid down by this Court. The petitioner shall be given opportunity to produce materials before the 2nd respondent showing the allotment of individual flats to the respective owners, agreements entered into with them and also evidence to show

that payments were made by the allottees from time to time towards the cost of construction. Books of accounts, bank statements and such other proof can also be produced. On the basis of evidence so produced, the 2nd respondent will consider whether the petitioner is entitled to the benefit of Explanation 2 to Section 2(e) of the Act, and if so, the order of assessment shall be suitably revised. In the process, if the 2nd respondent feels that notice shall be issued to the respective owners of the flats, it will be open to him to do so. This shall be completed by the 2nd respondent, as expeditiously as possible, at any rate, within 3 months of receipt of a copy of this judgment.

ANTONY DOMINIC, JUDGE.

Rp